NO. 2714

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ONG SEEN, Alias ONG CHONG LUNG,
Appellant.

vs.

ALFRED E. BURNETT, Inspector in Charge, United States Immigration Service at Tucson, Arizona,
Appellee.

BRIEF OF APPELLEE

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This is an appeal from an order of the District Court of the United States for the District of Arizona, remanding the petitioner to the custody of the Immigration officers. The petitioner had been ordered deported under departmental proceedings, and the warrant for deportation had been issued by the Secretary of Labor. Thereupon the petitioner sued out a writ of habeas corpus, and, upon hearing, was ordered remanded to the custody of the Inspector in Charge at Tucson, Arizona. In his return to the writ of habeas corpus the respondent annexed a full transcript of the proceedings had in the department and made the same a part of his return. All the evidence, therefore, upon which the Secretary of Labor acted in ordering the deportation and in issuing his warrant therefor is contained in the return.

STATEMENT OF FACTS

The appellant is an alien, a native of China, and of the Chinese race. He came to the United States from China and arrived at the port of San Francisco, California, on SS. "America Maru" April 8, 1906 (Transcript of Record, p. 95). At that time he presented as evidence of his right to come into this country a certificate issued to him as a merchant under Section 6 of the Act of Congress of July 5, 1884 (Transcript of Record, p. 92). This certificate was issued to the appellant in the name of Tang San, and represented him to be a merchant, dealing in metals, and a member of the firm of Hop Yick Loong at a certain designated point in China, for a period of eight years, and as having a two thousand-dollar (gold) interest in that firm.

The American Consul-General at Canton, China, on February 23, 1906, addressed a letter (Transcript of Record, p. 89) to the Commissioner of Immigration at San Francisco, California, advising, among other things, that he had on that date visaed the section-six certificate of Tang San and that Tang San would take with him a thousand dollars gold and would have three thousand sent him later by draft; that Tang San's father was known to have seventy thousand dollars, while the son's personal worth was fifty thousand dollars Mexican. The Consul-General apparently bases his statements upon letters received by him from Man Chun Yuen and Shing Hing (Transcript of Record, pp. 93-94). This Shing Hing, in his letter to the Consul-General on February 19, 1906, stated that "Tang Shan (San) is going to set up as wholesale sundry goods shop in San Francisco. We guarantee that all his statements are true." Upon this showing the applicant (the appellant in this case) was landed by the appropriate Immigration officer at San Francisco (Transcript of Record, p. 25). From the time of his arrival on April 6, 1906,

until January 23, 1912, appellant resided in San Francisco and Oakland, California (Transcript of Record, p. 42). Almost immediately after his arrival in the United States, appellant became a peddler of Chinese herbs, "taking them about from house to house for sale," and continued in that occupation for a period of four years (Transcript of Record, p. 42). These herbs he bought in small quantites and peddled them from house to house (Transcript of Record, p. 43). In July, 1908 (more than two years after his arrival), he invested five hundred dollars in the Doap Leun Hong Drug Store at 844 Dupont Street, San Francisco (Transcript of Record, pp. 42-43). He did not become an active member of the firm until S. T. 2/10/1 (November 1, 1910) (Transcript of Record, p. 104). Appellant claims that he still retains that five hundred-dollar interest in the firm, but has never received any dividends from that investment (p. 46). The investment has never produced him a living, but he has "made money by peddling (Transcript of Record, p. 47). He has no interest in any other mercantile establishment (Transcript of Record, p. 47). This firm has a capital stock of $28,500 held by fifty-three members (Transcript of Record, pp. 104-105). On December 22, 1911, appellant made application to the Immigration officers at San Francisco, California, for pre-investigation of status as a lawfully domiciled Chinese merchant(Transcript of Record, p. 84). The application was approved and the appellant departed from the country January 23, 1912 (Transcript of Record, p. 93 and p. 86). From this trip appellant returned to the port of San Francisco on SS. "Mongolia" February 4, 1913 (Transcript of Record, pp. 44 and 73), and was admitted by the Commissioner of Immigration at San Francisco, California, who issued to the appellant certificate of identity No. 10761 (Transcript of Record, p. 73). Following this admission, appellant promptly returned to his old occupation as a

peddler of herbs and continued in that employment for about one year (Transcript of Record, p. 45), at the end of which time he left San Francisco (February 28, 1914) for Phoenix, Arizona (Transcript of Record, p. 47). He remained in Phoenix but a few days and then proceeded to Mesa, Arizona, where he made the Arizona restaurant his headquarters (Transcript of Record, p. 47). Appellant alleges that he came to Arizona looking for a location for a business, but has no money in hand nor in bank, and no one owes him any money (Transcript of Record, p. 47). "If I find a suitable location I could borrow and start a store" (Transcript of Record, p. 48). This appellant arrived in Phoenix March, 2, 1914, and on March 6, 14, 18, and 27, 1914, was seen working in a restaurant at Mesa, Arizona, by Inspector Robertson (Transcript of Record, p. 55). To Thomas G. Peyton, City Marshal of Mesa, this appellant appeared to be a regular employee of the Arizona Restaurant for a period of three or four weeks prior to March 29, 1914 (Transcript of Record, pp. 56 and 57).

Following an investigation by the officers of the Immigration Service, the Acting Secretary of Labor, on the 16th day of April, 1914, issued his warrant for the arrest of the appellant in this case, directing that he be granted a hearing to enable him to show cause why he should not be deported in conformity with law (Transcript of Record, pp. 70-71). Pursuant to said order the appellant was accorded a hearing before the appellee in the City of Tucson on the 23d day of April, 1914, said hearing being continued from day to day and concluded on May 5, 1914 (Transcript of Record, pp. 36-83). Throughout said hearing and at every session thereof, the appellant was represented by counsel of his own selection (Transcript of Record, pp. 36-83). A full and complete transcript of said hearing and the proceedings and the evidence had thereat was thereafter transmitted (through official channels)

to the Secretary of Labor (Transcript of Record, pp. 33-35). Thereafter, upon due consideration of said evidence and proceedings, the Secretary of Labor did, on the 28th day of May, 1914, issue his warrant for the deportation of appellant (Transcript of Record, pp. 32-33), assigning as the ground for his order of deportation: "That the said alien is unlawfully within the United States, in that he has been found therein in violation of the Chinese-exclusion laws and is, therefore, subject to deportation under the provisions of Section 21 of the above-mentionedh Act (Act of Congress approved February 20, 1907, amended by the Act approved March 25, 1910), and may be deported in accordance therewith."

ARGUMENT

I.

THE APPELLANT WAS UNLAWFULLY IN THIS COUNTRY BECAUSE HE BECAME A LABORER IMMEDIATELY AFTER HIS ARRIVAL.

It appears from the appellant's own testimony taken before the Immigration Inspector at Phoenix, Arizona, on March 29, 1914, that soon after he landed in the United States, he commenced to follow the oicupation of a peddler of Chinese herbs. He testified:

> "Q. Where did you go to live immediately upon your arrival in April, 1906?
>
> A. Immediately after I landed the fire and earthquake occurred in San Francisco and I stayed in San Francisco some time after that.
>
> Q. How long?
>
> A. Until I went to China S. T.3/12/6 (January 23, 1912).
>
> * * * * * * *
>
> Q. Didn't you live in Oakland or in near-by towns?

A. I moved over to Oakland after the fire for a year and a few months.

Q. What did you do during that year and few months?

A. I procured some Chinese medicines from the Doap Leun Hong Drug Store and peddled them.

Q. Taking them about from house to house for sale?

A. Yes.

Q. Were those medicines Chinese herbs?

A. Yes.

Q. How long did you follow that business in Oakland and vicinity?

A. About four years.

Q. Did you peddle those herbs in Oakland all the time or did you include other towns in your itinerary?

A. San Francisco and Oakland.

Q. Where did you make your headquarters during those four years?

A. I made my headquarters in the Doap Leun Hong Drug Store.

* * * * * * *

Q. During those four years did you just buy those Chinese herbs in small quantities and peddle them from house to house?

A. Yes."

(Transcript of Record, pp. 41, 42, and 43.)

It thus appears that almost immediately after his arrival, the appellant became a peddler and followed that occupation for at least a year or two following his arrival.

The Act of Congress of November 3, 1893 (28 Statutes at Large, Chapter XIV) defines or specifies certain occupations which those following are deemed laborers. Among those occupations is that of peddler, and a peddler is there

expressly declared to be a laborer within the meaning of the Chinese-exclusion Acts.

United States vs. Mark Ying, 76 Fed. 450.

Cheung Him Nin vs. United States, 133 Fed. 391.

A peddler going from house to house selling merchandise to whomsoever might desire to purchase might, in the absence of an Act of Congress defining the term "laborer" be deemed a merchant, or his calling might be deemed to partake to some extent of a mercantile character, and it was the intent of Congress to so define the term "laborer" as to exclude peddlers from the privileges granted to merchants.

Lee Ah Yin vs. United States, 116 Fed. 614.

In that case, which was decided by this Court, it said: "The occupation of mining, taking fish for the purpose of selling the same, *peddling,* operating a laundry, etc., partake of some of the characteristics of the occupation of a merchant, and those engaged therein may, in a sense, be deemed merchants. Evidently, it was to define these specific occupations and to declare that the persons engaged therein are not merchants that the act was so adopted." (Italics ours.)

The evidence taken at the warrant hearing before the Immigration authorities showed that the appellant entered this country under what is commonly called in immigration parlance "a section-six merchant's certificate." As shown by the testimony above quoted, he almost immediately entered upon the business of peddling Chinese herbs from houses to house and continued that occupation for nearly four years. For at least two years he did not acquire any interest in any mercantile establishment, for he testified, "I did not become a partner in that drug store until K. S. 34, sixth month" (July, 1908). For over two years, therefore, his sole occupation was that of a peddler, or, within the definition of the Act of Congress, a laborer.

He comes, therefore, within that numerous class of cases holding that one who comes as a merchant and within a short time becomes a laborer, is subject to deportation.

Chain Chio Fong vs. United States, 133 Fed. 154.
Chueng Him Nin vs. United States, 133 Fed. 391.
United States vs. Yong You, 83 Fed. 832.
United States vs. Foo Duck, 172 Fed. 856 at 858.

On who enters the United States as a merchant under certificate issued under Section Six of the Act of Congress above referred to, may lawfully enter only for the purpose of conducting business as a merchant. However correct in form or substance the certificate entitling him to admission as a merchant may be, the apparent right conferred by it may be overcome by circumstances showing that he did not intend to become a merchant, but, in reality, to become a laborer; and the most persuasive evidence of such intent is the fact that he did immediately or within a short time actually become a laborer. This doctrine is set forth with great clearness by Judge Adams, afterwards Circuit Judge of the Eighth Circuit, in U. S. vs. Yong You, 83 Fed. 832.

And in another case arising in the Northern District of California, it was held that the effect of the section-six certificate was overcome by evidence showing that the defendant soon after landing engaged in manual labor.

United States vs. Ng Park Pan, 86 Fed. 805.

Much was said, upon the argument of this case before the District Court, upon the idea that the appellant landed in San Francisco immediately before the fire and earthquake of April, 1906, and was, therefore, prevented from carrying out his original intention of entering upon a mercantile business; hence, was compelled to pursue the calling of a peddler. It would probably be sufficient to say that no such exception is allowed by the statute. But the

facts do not warrant the taking into consideration of any such idea. The appellant landed in San Francisco a complete stranger. He had made no arrangements for entering into business at any particular place. He had formed no business relations with anyone in this country. He was not limited in his choice of a business location to San Francisco or any other particular place. All of California, and, in fact, all of the United States was open to him for the establishment of a mercantile business had he desired to do so. No reason existed why, if it was his intention to become a partner in a drug store, he could not have acquired the interest in the drug store at Oakland, which he claimed subsequently to have acquired. An established merchant whose business was destroyed by that catastrophe might claim with some justice that he was compelled thereby to temporarily enter upon some other occupation and such misfortune would appeal to the sympathy of the court. But, in this case, the appellant landed only a few days before the earthquake; with no preparation prior to his arrival, to enter in business at any particular place, with no such arrangement made after his arrival, with abundant opportunity, if he had the means and the disposition to do so, to establish himself in the mercantile business at any place he saw fit, he deliberately entered upon a calling which Congress has classed as "labor," and, finally, now claims membership in the exempt classes by reason of a mercantile status acquired by the purchase of an interest in a mercantile establishment not in San Francisco, but in another city which was unharmed by the earthquake. It is submitted, therefore, that the appellant's residence in San Francisco after his landing and during the period that he pursued the calling of a peddler, was unlawful and that he might lawfully have been deported at any time during that period.

II.

THE SECTION-SIX CERTIFICATE UPON WHICH THE APPELLANT WAS ORIGINALLY ADMITTED TO THIS COUNTRY WAS PROCURED BY FALSE REPRESENTATIONS.

Certain letters appear in the record addressed to the United States Consul-General at Canton, China, with respect to the appellant and the extent of his interest in a mercantile establishment in China. Basing his statements, apparently, upon these letters, the Consul-General on February 23, 1906, addressed a communication to the Commissioner of Immigration at San Francisco, California, in which he stated that the appellant would take with him one thusand dollars gold and would have three thousand dollars sent him by draft; that the appellant's father was known to be worth seventy thousand dollars, while the son's (appellant's) personal worth was fifty thousand dollars Mexican (Transcript of Record, p. 89). In his testimony, the appellant states that he was only a silent partner in the firm of Hop Yick Loong, and only took an active part in conducting the business of that company for a little while as a salesman (Transcript of Record, p. 53). He testifies that his father was engaged in running a small drug store in China, the value of which was approximately two thousand dollars (Transcript of Record, pp. 40 and 41). Though he claimed to have considerable interest in the Hop Yick Loong store in China, he was unable to remember how long he had been interested in that firm until he had ascertained the number of years stated in the certificate (Transcript of Record, p. 52) He is unable to remember how much money he brought to the United States when he landed the first time, and was unable to give a better answer than to say that he did not take note of it (Transcript of Record, p. 58). But the

best evidence that he did not have sufficient means to enter upon the mercantile business is that he did not, in fact, enter upon such business, and that he immediately entered upon the precarious occupation of a house to house peddler of Chinese herbs. It would thus appear that the Consul-General, in issuing the certificate, was misled by the statements contained in the letters addressed to him, as appears in the record, or by some other statements, and accorded to the appellant a high commercial and financial standing which the facts did not warrant; and, had the Consul-General known the actual facts as disclosed by the testimony of the appellant given on the hearing involved in this case, in all probability no such certificate would ever have been issued.

Section-six certificates have always been construed with the utmost strictness, and the most full and complete statements required to be made in them, and a certificate not strictly conforming to the requirements does not entitle the owner to remain in the United States.

United States vs. Pin Quan, 100 Fed. 509.

Cheung Pang vs. United States, 133 Fed. 392.

III.

THE PREINVESTIGATION AND SUBSEQUENT PERMISSION TO LAND UPON RETURN ARE OF NO EFFECT.

Much was said in the argument before the court below of the supposed effect of the preinvestigation of appellant's alleged status as a merchant and the permission given him to enter the United States and the certificate of identity issued to him upon his return.

The so-called preinvestigation was made under Rule 15 of the Regulations of the Department of Labor governing the admission of Chinese. This proceeding is designed to

facilitate the return of Chinese merchants or other exempt Chinese who desire to go abroad temporarily. Its utmost effect, and its only purpose, is, in the language of the rule itself, "to avoid delay in securing admission upon return." Neither the admission upon return, nor the certificate of identity, amounts to an adjudication of the right of the alien to enter. The certificate of identity is no more than what it purports to be, a mere statement that the person to whom the certificate is issued is the same person who had previously departed for China. That such a certificate is no obstacle in the way of deporting a Chinaman, if he were not entitled to admission, has been repeatedly held.

Low Quan Wo vs. the United States, 184 Fed. ~~485~~ 68

Pearson vs. Williams, 202 U. S. 281.

Li Sing vs. U. S., 180 U. S. 486.

And see, also, the elaborate discussion of this proposition by Judge Rose, of the District of Maryland, in

Ex parte Wing Yee Toon, 237 Fed. 247.

All the authorities hold that the admission of a Chinaman, or, for that matter, any alien, whatever may be its effect, does not prevent his subsequent expulsion from the country, if the facts show that he was not entitltde to admission.

In this case the facts are entirely undisputed. As previously argued, the appellant was wrongfully in this country, and could, and, it is respectfully submitted, should have been deported prior to his departure for China and prior to the so-called preinvestigation. Being so subject to deportation, because he was here in violation of the Chinese-exclusion Act, he acquired no new status and had added nothing in the way of right to enter this country by the preinvestigation and his subsequent departure and return.

If anything were needed to show that the so-called preinvestigation and subsequent proceedings amounted to

nothing in the way of raising a presumption in favor of the alien or the shifting of the burden of proof, it will be found in a reading of the testimony taken on the so-called preinvestigation. The perfunctory and apparently routine character of this proceeding; the character of questions propounded; the answers of witnesses, which largely consist of either conclusions or opinions—demonstrate that no such effect as may be claimed, and was claimed in the court below, should be given to this proceeding. To hold that such a proceeding should have any effect even upon the burden of proof or the quantum of proof, as against the assertion of the Government that the alien is wrongfully in the United States, would be contrary, not only to the decisions upon the subject, but to reason, based upon the character of the proceeding itself.

The whole object of the proceeding is merely to facilitate and avoid delay in the landing of the alien upon his return after a temporary absence. It has nothing to do with his original status or the rightfulness of his original entry. It is an ex parte proceeding, looking to the determination of the then existing status of the alien, and done merely for the purpose of establishing the identity of the person returning with the person departing, and to facilitate and avoid delay in his landing.

Hom Yuen vs. United States, 214 Fed. 57.

Immigration officials have no power to estop the Government from questioning the rightfulness of either the original or the subsequent entry, and their action has no such effect.

Counsel in the court below dwelt with great earnestness on the case of United States vs. Hom Lim (214 Fed. 456), and particularly on that portion of the opinion of the court relating to the case of the United States vs. Quan Wah, in which the court said, speaking of the necessity

of proof to over come the presumption arising from the admission of a Chinese alien: "The decision as to the right to enter was presumptively correct, and, unless the United States shows persuasively to the contrary, the mere certificate of admission is sufficient." This opinion was by Judge Chatfield, of the Eastern District of New York, and covered seriatim a number of Chinese deportation cases then pending before him. Each of these cases was subsequently appealed by the Government to the Circuit Court of Appeals for the Second Circuit. In the first cases decided by the latter court, the judgment of the District Court was reversed, the Court taking an entirely different view, both of the construction of the statute, and the effect of it, from that entertained by the District Court, and remarked that it was quite apparent from the record that the disposition of the case in the District Court was made on the theory that the Government had the burden of proof.

United States vs. Hom Lim, ~~228~~ 223 Fed. 520.

Later the particular case with reference to which the language above quoted was used, was passed upon by the Circuit Court of Appeals, and the judgment in that case was reversed.

United States vs. Quan Wah, 224 Fed. 420.

But, whatever might be said as to the burden of proof, or whatever effect may be given to either the original section-six certificate or to the preinvestigation proceedings and the subsequent admission and certificate of identity, it is obvious that these may be overcome by proof that, in fact, the alien was subject to deportation. And in this case the undisputed evidence, consisting principally of the alien's own testimony, shows that immediately after his first arrival in the United States he became a laborer and so remianed for at least two years; that he then ac-

quired, or claimed to have acquired, a five hundred-dollar interest in a Chinese drug store in which there were fifty-four partners besides himself, from which he has never received any income or dividend upon his investment, and in which he claims to have served a short time as a salesman. After his departure for China and return to the United States, he again resumed his status of a laborer. He testifies with respect to his conduct immediately upon his last arrival:

"Q. Where did you go immediately after landing in February, 1913?

A. Doap Lung Hing drug store.

Q. For how long did you live there?

A. Until I came to Arizona about three weeks ago.

Q. That would be something over a year, wouldn't it?

A. Yes.

Q. What did you do during that year?

A. I got some drugs from my drug store and peddled them from place to place.

Q. Chinese herbs exclusively?

A. Yes.

Q. In other wards, you went back to your old job as a peddler?

A. Yes."

(Transcript of Record, p. 45.)

Again, he testifies:

"Q. How much money did you have when you returned from China in February, 1913?

A. Just a little money for expenses."

(Transcript of Record, p. 51.)

Upon his arrival in Arizona he immediately went to a Chinese restaurant in Mesa. While he strongly denies that he was regularly employed in that restaurant, he

admits that he did some work, and the testimony of Mr. Robertson (Transcript of Record, pp. 54 and 55) and of Mr. Peyton (Transcript of Record, pp. 56 and 57) tends strongly to show that he was actually engaged as a laborer in that restaurant. Sufficient evidence, at least, was presented to warrant a finding by the Immigration officers that he was, in fact, a laborer in a restaurant at the time of his arrest, and for some time previously had been.

Again, the alien testifies:

> "Q. You say you came to Arizona looking for a location for a business without money?
>
> A. If I found a suitable location I could borrow and start a store."

What had become of the one thousand dollars which he proposed to bring with him on his first landing, or the three thousand dollars that was to follow by draft, is wholly unexplained. What had become of the five thousand-dollar interest in the metal store in China, or the fifty thousand dollars Mexican which he led the Consul-General at Canton to believe he possessed, is likewise without explanation. Why, instead of availing himself of these resources, if they actually existed, he chose to make a living by peddling Chinese herbs, or, as he claims, by working for his board in a restaurant in Arizona, is not apparent from anything contained in the record. But the fact is that it takes no reading between the lines, and no very strained inference to one acquainted with these Chinese cases, to show that the actual truth is that he came here as a laborer in the first instance; that he obtained his section-six certificate by deception; that he had no intention of becoming a merchant, and no means with which to become one if he had such intention. He is, and always has been, a laborer pure and simple, and if a case can be presented which will justify deportation it would seem that one is here presented.

IV.

ONE UNLAWFULLY IN THE UNITED STATES MAY NOT SUBSEQUENTLY ACQUIRE AN EXEMPT STATUS AND THEREBY ENTITLE HIMSELY TO REMAIN.

The Chinese-exclusion Acts apply as well to one who has once been in this country and returned to China, as to one seeking admission in the first instance.

Li Mon vs. United States, 66 Fed. 955.

And it has been held by this Court that one who has unlawfully in the United States may not change his status and assume that of the privileged classes, and thereby become entitled to remain in this country. As it was said by this Court, "When, however, that domicile (in the Uniter States) has been acquired contrary to, and in violation of, the laws of the United States, and when, as here, it is only through an unlawful entry into the United States that the Chinese person has secured residence in this country, they cannot purge themselves of their offenses by assuming the occupation of members of the privileged class and establish their right to remain by proof of that character."

United States vs. Chew Chee, 93 Fed. 797.

V.

THE IMMIGRATION AUTHORITIES HAVE THE RIGHT TO DEPORT AN ALIEN MORE THAN THREE YEARS AFTER HIS FIRST ARRIVAL IN THE UNITED STATES BY DEPARTMENTAL PROCEEDINGS.

It has been settled that the three-year period within which the officials of the Department of Labor may act in

deporting an alien by departmental proceedings, applies to the last entry regardless of the time of the first.

Choy Gum vs. Backus, 223 Fed. 487.
Bugajewietz vs. Adams, 228 U. S. 585.
Lapina vs. Williams, 232 U. S. 78.

VI.

SECTION 21 OF THE IMMIGRATION ACT APPLIES TO ALIENS WHO ARE IN THIS COUNTRY IN VIOLATION OF THE CHINESE-EXCLUSION ACTS.

While this question was elaborately discussed in the court below, it is not thought necessary to make any extended argument in this Court. The question seems to be thoroughly settled. Counsel for the present appellee cited to the court below the following cases:

Ex parte Lam Pin, 217 Fed. 456.
U. S. ex rel. Hamm Pon vs. Sisson, 222 Fed. 693.
United States vs. Wong You, 223 U. S. 67.

In reality, it would seem that the whole question is settled by the case of the United States vs. Wong You. It is interesting to note, however, that this question has been considered by several Federal Courts since the decision of this case by the District Court, and the unanimous holding of the courts is as here argued.

Ex parte Lee Ying, 225 Fed. 335.
Ex parte Woo Shing, 226 Fed. 141.
Ex parte Chin Him, 227 Fed. 131.

VII.

THE APPELLANT WAS GIVEN A FAIR HEARING BEFORE THE IMMIGRATION OFFICERS.

What constitutes a fair hearing has been a subject of much discussion, especially in the opinions of several Dis-

trict Courts. In this circuit, however, the question has been fully considered and settled in the case of Choy Gum vs. Backus, 223 Fed. 487. Within the rules, as laid down in that decision, the hearing in this case was eminently fair. The petitioner was represented by counsel employed by him or in his behalf. Every opportunity was presented for the inspection of papers and records. Full opportunity was given to present any evidence that might be desired on behalf of the alien, and no evidence was excluded from consideration.

VIII.

THE EXTENT OF REVIEW OF HABEAS CORPUS.

This Court has had occasion to pass upon this question, and is so familiar with the authorities on the subject that again an extended argument would be of little aid to the Court. The only question that may be passed upon in a habeas corpus proceeding is the question whether the petitioner was given a fair hearing, and whether there was some evidence tending to support the decision of the Secretary of Labor. As to questions of fact, the findings of the Immigration authorities are final.

United States vs. Suekichi, 199 Fed. 750.
Ex parte Hudekuni Iwata, 219 Fed. 610.
United States vs. Jew Toy, 198 U. S. 256.
Chin Low vs. United States, 208 U. S. 8.
Low Wah Suey vs. Backus, 275 U. S. 460.
United States vs. Li Chong, 217 Fed. 45.

IX.

THIS CASE IS ONE IN WHICH THE ACTION OF THE SECRETARY OF LABOR CANNOT BE REVIEWED BY THE COURTS.

Conceding, as it must be, that neither the section-six certificate upon the appellant originally landed, nor the

preinvestigation proceedings, nor the certificate of identity, is conclusive of the right of the alien to remain in this country, what can the court pass upon in this case? Grant that all or any of those documents or proceedings amount to prima facie evidence of the right of the alien to remain, and then what. The prima facie effect may be overcome, and, if there is any evidence tending to overcome them, its effect and probative force is entirely for the Department of Labor and not for the courts. The appellant was ordered deported because he was "unlawfully within the United States in that he has been found therein in violation of the Chinese exclusion laws." The evidence abundantly support this finding. Had the appellant been proceeded against one year after his first arrival, the presumption created by his merchant's certificate would have been overcome by the proof appearing in this record that he had immediately become a laborer, and he would have been ordered deported. Were this court to review such a proceeding on appeal, after the same finding by a Commissioner and a District Court, under its repeated decisions, it would be unable to disturb the finding. The judgment would be affirmed because the evidence warranted a finding that the petitioner was unlawfully within the United States. Being unlawfully within the United States, he could not acquire a right to remain by assuming the status of one of an exempt class, even if full credence be given to his claim that he had acquired an interest in a mercantile establishment. Upon his second arrival, the appellant resumed the status of a laborer and followed no other calling up to the time of his arrest. These facts are all shown by the appellant's own testimony; they tend to justify the finding of the Secretary of Labor, and furnish evidence in support of such finding. That being the case, the power of the court to review the case on habeas corpus ends.

It is submitted that the order of the District Court remanding the petitioner should be affirmed.

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